

**MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Van Dusen, et al. v. Swift Transportation Co, Inc, et al.

THE HONORABLE JOHN W. SEDWICK 2:10-cv-0899 JWS
PROCEEDINGS: ORDER FROM CHAMBERS Date: July 21, 2014

This case was remanded by the Court of Appeals with the following instruction:
“On remand, the district court must determine whether the Contractor Agreements between each appellant and Swift are exempt under § 1 of the FAA before it may consider Swift’s motion to compel [arbitration].” (Doc. 534-3 at 2) If plaintiffs are or were employees, then § 1 would foreclose arbitration.

In this court’s original order requiring arbitration, the court explained that, “resolving whether an employer-employee relationship exists would require an analysis of the Contractor Agreement as a whole, as well as the Lease and evidence of the amount of control exerted over plaintiffs by defendants.” (Doc. 223 at 19) Indeed, to sort out whether an individual is an employee rather than an independent contractor generally requires consideration of numerous factors, including the employer’s right to control the work, the individual’s opportunity to earn profits from the work, the individual’s investment in equipment and material needed for the work, whether the work requires a specialized skill, and whether the work done by the individual is an integral part of the employer’s business. *Real v. Driscoll Strawberry Associates, Inc.*, 603 F.2d 748, 754 (9th Cir. 1979).

Following the remand, the court directed the parties to file a notice outlining what needed to be done to conclude the case and suggesting a schedule. (Doc. 536) Defendants responded at docket 542 essentially contending that the only thing to be done was for the court to determine the status of the plaintiffs by reviewing the Contractor Agreements in light of the briefing earlier filed on the motion to compel arbitration.

Plaintiffs responded at docket 543. They laid out a comprehensive schedule for the discovery needed to determine what facts bear on plaintiffs’ status as employees or

1 independent contractors. For the reasons noted in the second paragraph of this order,
2 the plaintiffs' approach to what is required by the remand order is correct, while
3 defendants' contention that the issue may be resolved on the basis of the existing
4 papers lacks merit. The court will shortly issue a planning and scheduling order largely
5 in conformity to the schedule suggested by plaintiffs.

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